REMARKS/ARGUMENTS

Claims 104-130 are pending in the application. Claims 1-103 were canceled by previous amendment. Claims 104-130 are rejected.

Rejections under 35 U.S.C. § 112

Claims 129 and 130 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse these rejections; however in order to expedite prosecution of the instant application and without acquiescing to the propriety of the rejections, Applicants have amended the claims to obviate the rejection. Claim 129 now recites first and second sound conduction channels. Claim 130 now recites means "for delivering received sounds to an acoustically sealed space about the eardrum"; and means "for concurrently directing occlusion sounds away from the eardrum, when worn by the user." Support for these amendment is found in the Specification, at, e.g., page 22, lines 5-11 and Figure 11.

Rejections under 35 U.S.C. § 103

Claim 128 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haroldson U.S. 6,094,494 in view of Brimhall U.S. 6,359,993.

Applicants respectfully traverse this rejection for two reasons. First, Haroldson teaches away from the tubular insert of claim 128. Specifically, Haroldson teaches away from the " appendage on the sound conduction tube or on the sound receiver module for cooperating with said at least one appendage to direct occlusion sounds away from the tympanic membrane" as is recited in claim 128. Haroldson is directed to an inflatable balloon (See Haroldson Abstract and Figures 2A-2D) which is intended to seal against the ear canal. Were the balloon of Haroldson to be modified to include the appendage is recited in claim 128, the device of Haroldson would not work for its intended purpose in that its balloon could not be inflated and could not seal against the ear canal since the air would escape around the sides of the ear canal (See Figure 2D in particular). Accordingly, since Haroldson teaches away from the invention of

claim 128, the skilled artisan the skilled artisan would not be motivated to combine Haroldson with the teachings of Brimhall, as there would be no expectation of success. Therefore on this basis ,withdrawal of the rejection is respectfully requested.

The above deficiencies notwithstanding, the rejection is also traversed in that the combination of Haroldson and Brimhall does not teach or reasonably suggest all elements of the invention of claim 128. Specifically, there is no teaching or suggestion whatsoever that the conduit 80 of Brimhall (See Brimhall Col 5, line 7 and Figure 1) would cooperate with the fitting balloon 50 of Haroldson (See Haroldson Col 4, line 44 and Figures 2A). To the contrary, since, as the Examiner correctly points out, neither reference teaches the appendages of claim 128, but rather individual alleged appendages (see 3/21/05 Office Action, at pages 4-5), the references can not and do not teach or reasonably suggest two appendages that cooperate. In other words, there can be no teaching or suggestion of appendages that cooperate, when neither reference teaches or suggests a second appendage in the first place. This is particularly the case, since as discussed above, the addition of the second alleged appendage impedes or destroys the intended function of Brimhall. Accordingly, for this separate and additional reason, Applicants respectfully request withdrawal of the rejection.

Double Patenting

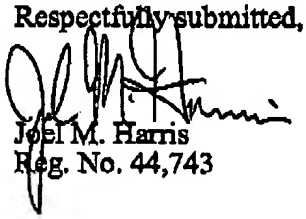
Claims 104-130 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-80 of U.S. Patent No. "6,724,9047." (Office action at page 5). This appears to be an oblivious typographical error since this is an eight digit number. Based on the claim quotation on page 5 of the Office Action, it appears that the Examiner was referring to U.S. Patent No. 6,724,902, this was subsequently confirmed by a phone call from the Examiner. To obviate the rejection, Applicants are filing herewith a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c).

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

It is believed that no fees are due with this response; however, should any fees be required under 37 C.F.R. § 1.16 to 1.21 for any reason, the Commissioner is authorized to charge Deposit Account No 20-1430. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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Attachments
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